



#16
GW
12/20/02

PATENT
Express Mail No. EV161198667US

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Serial Number: 09/492,032
Filed: January 27, 2000
Group Art Unit: 3628
Examiner: William L. Miller
Applicant: Troy D. Acton, Walter A. Hullemeyer, William F. Neth,
Roger L. Reuss and Charles F. Winburn
Title: SEALABLE CASKET HAVING MEMORABILIA
COMPARTMENT

Cincinnati, Ohio 45202

November 19, 2002

Assistant Commissioner of Patents
Washington, D.C. 20231

Sir:

REPLY BRIEF ON APPEAL

This is in reply to the Examiner's Answer mailed September 19, 2002 in
the captioned Appeal.

Issues 1-3 and 5-9

The Examiner states: "The Examiner acknowledges Shanks discloses a
food storage compartment for a refrigerator which is not of the same field of endeavor of
the Appellants' invention, namely caskets, however Shanks is of a similar problem solving
area, namely drawer assemblies slidably received within a housing and sealable thereto."

The error of the Examiner is in defining the problem solving area, "namely
drawer assemblies slidably received within a housing and sealable thereto," in the

RECEIVED
NOV 26 2002
GROUP 3600

RECEIVED
NOV 23 PM 2:26
BOARD OF PATENT APPEALS
AND INTERFERENCES

abstract, which of course the Examiner must do in order for the problem solving area of Shanks to be even remotely related to the claimed invention. The claimed invention is a sealable casket having a shell and a cap and a memorabilia compartment within the cap including an access opening, a removable cover over the access opening and a gasket disposed between the cover and the cap (claim 1), a casket comprising a shell and a cap engaging the shell including a header wall, the header wall including an access opening, a cover and a cam to draw the cover to the header wall (claim 28), a casket comprising a shell and a cap engaging the shell and including a header wall, the header wall including an access opening, a cover and a gasket disposed between the cover and the header wall (claim 43) and a casket comprising a shell and a cap and a drawer carried by the cap, and a gasket disposed between the drawer and the cap (claim 46), all to provide sealed storage of memorabilia within a casket. The Examiner may not broadly mischaracterize the problem solving area simply in order to make a non-analogous prior art reference analogous for the purposes of combining with other references in hindsight to facilitate a rejection of the claims.

The Examiner states: "The Examiner acknowledges Shanks discloses a slidable drawer assembly for a refrigerator as opposed to a slidable drawer assembly for a casket, however, the Examiner has merely labeled the elements of the Shanks' structure as such for referencing the respective elements of the Appellants' claimed invention."

This is tantamount to the Examiner stating that he has simply mislabeled the elements of

the prior art structure so as to facilitate his convenient rejection of Appellants' claimed invention. Shanks has neither a casket cap nor a casket cap header wall, terms of art well known to those skilled in the art.

The Examiner states: "The Examiner disagrees as the motivation to combine Shanks with Biondo et al has been clearly given as to provide a seal between the cap (406) and cover (410) thereby protecting the drawer contents." Nowhere in Shanks is it said that its food storage compartment is usable in a casket to provide sealed storage of memorabilia within the casket. Nowhere. In the absence thereof the Examiner has relied on his own speculation and unfounded assumptions. However, it is well settled that the Examiner is prohibited from substituting his own speculation and unfounded assumptions for the factual knowledge of a person skilled in the art. As was stated more than thirty years ago by the CCPA:

The Supreme Court in Graham [Graham v. John Deere Co., 383 U.S. 1] and Adams [U.S. v. Adams, 383 U.S. 39], supra, foreclosed the use of substitutes for facts in determining obviousness under section 103. The legal conclusion of obviousness must be supported by facts.

. . . .

The Patent Office has the initial duty of supplying the factual basis for its rejection. It may not, because it may doubt that the invention is patentable, resort to speculation, unfounded assumptions or hindsight reconstruction to supply deficiencies in its factual basis.

In Re Warner and Warner, 154 USPQ 173, 177-178 (CCPA 1967) (emphasis in original).

The CCPA's statement of the law is as valid today as it was then. For example, the Board itself has since stated:

As stated in In Re Warner, 379 F.2d 1011, 154 USPQ 173 (CCPA), the legal conclusion of obviousness must be supported by facts. Where the legal conclusion is not supported by facts it cannot stand.

Ex parte Saceman, 27 USPQ 2d 1472 (Bd. Pat. App. and Int. 1993) (emphasis added).

Issues 2 and 3

The Examiner states: "The Examiner acknowledges Shank discloses a sliding shelf structure which is not of the same field of endeavor of the Appellants' invention, namely caskets, however Shank is of a similar problem solving area, namely sliding mechanisms for pull out devices."

Again the error of the Examiner is in defining the problem solving area, "namely sliding mechanisms for pull out devices," in the abstract, which of course the Examiner must do in order for the problem solving area of Shank to be even remotely related to the claimed invention. The claimed invention is a sealable casket having a shell and a cap and a memorabilia compartment within the cap including an access opening, a removable cover over the access opening and a gasket disposed between the cover and the cap, the cover being a face plate of a drawer supported by a drawer support, in

combination with, a mechanism for movably mounting the drawer (claims 12-15, 17 and 26), all to provide sealed storage of memorabilia within the casket. The Examiner may not broadly mischaracterize the problem solving area simply in order to make a nonanalogous prior art reference analogous for the purposes of combining with other references in hindsight to facilitate a rejection of the claims.

The Examiner states: "The Examiner acknowledges Shank discloses a slidable shelf structure as opposed to a slidable drawer assembly, however, the Examiner has merely labeled the elements of the Shank structure as such for referencing the respective elements of the Appellants' claimed invention." Again, this is tantamount to the Examiner stating that he has simply mislabeled the elements of the prior art structure so as to facilitate his convenient rejection of Appellants' claimed invention. Shank has neither a cabinet nor a slidable drawer assembly nor a drawer support, terms of art well known to those skilled in the art.

The Examiner states: "The Examiner disagrees as the motivation to combine Shank with Biondo et al has been clearly given to provide enhanced sliding of the drawer and reversal of brackets." Nowhere in Shank is it said that its sliding shelf structure is usable in a casket to provide sealed storage of memorabilia within the casket. Nowhere. In the absence thereof the Examiner has improperly relied on his own speculation and unfounded assumptions.

Issues 4, 5, 7 and 9

The Examiner states: “The Examiner acknowledges Lee discloses a cam lock for a desk drawer which is not of the same field of endeavor of the Appellants’ invention, namely caskets, however Lee is of a similar problem solving area, namely drawer locking mechanisms.”

Again the error of the Examiner is in defining the problem solving area, “namely drawer locking mechanisms,” in the abstract, which of course the examiner must do in order for the problem solving area of Shank to be even remotely related to the claimed invention. The claimed invention is a casket comprising a shell and a cap engaging the shell including a header wall, the header wall including an access opening, a cover and a cam to draw the cover toward the header wall (claim 28), a casket comprising a shell and a cap engaging the shell and including a header wall, the header wall including an access opening, a cover and a gasket disposed between the cover and the header wall, in combination with, a latching mechanism to compress the gasket between the cover and the header wall (claim 44) and a drawer received by the access opening and the latching mechanism to draw the drawer into the cap (claim 45), a casket comprising a shell and a cap and a drawer carried by the cap, and a gasket disposed between the drawer and the cap, in combination with, a latching mechanism to compress the gasket between the cap and the drawer (claim 47), all to provide sealed storage of memorabilia within a casket. The Examiner may not broadly mischaracterize the

problem solving area simply in order to make a nonanalogous prior art reference analogous for the purposes of combining with other references in hindsight to facilitate a rejection of the claims.

The Examiner states: "The Examiner acknowledges Lee discloses a lockable desk drawer as opposed to a lockable cabinet drawer, however the Examiner has merely labeled the elements of the Lee structure as such for referencing the respective elements of the Appellants' claimed invention." Again, this is tantamount to the Examiner stating that he has simply mislabeled the elements of the prior art structure so as to facilitate his convenient rejection of Appellants' claimed invention. Lee has no cabinet, a term of art well known to those skilled in the art.

Nowhere in Lee is it said that its adjustable cam lock is usable in a casket to provide sealed storage of memorabilia within a casket. Nowhere. In the absence thereof the Examiner has improperly relied on his own speculation and unfounded assumptions.

Conclusion

For the foregoing reasons, it is submitted that the §103(a) rejections are in error. Reversal of the rejections is respectfully requested.

Respectfully submitted,

WOOD, HERRON & EVANS, L.L.P.

By: 

Wayne L. Jacobs
Reg. No. 35,553

2700 Carew Tower
441 Vine Street
Cincinnati, OH 45202
Phone: (513) 241-2324
Fax: (513) 421-7269